Extra: **Supreme Court to Pass on Un-American Committee, See Page 2**

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Acheson Declares War on Louis XIV

Mr. Acheson shares a common weakness for sweeping historical parallels. In his address on receiving the Woodrow Wilson Award, he said that five times in the last 400 years a coalition had been necessary "to resist the imposition by a powerful state of its hegemony upon others." He said a coalition "defeated the attempt of Louis XIV to impose absolutism upon Europe, to make subject peoples out of independent peoples." This rather loosely characterizes a victory which ended by handing over the peoples of Italy and the Netherlands to the absolutist Austrian Hapsburgs, leaving Spain and her colonies to the absolutist Bourbons and rewarding the absolutist Hohenzollerns with the Crown of Prussia.

This syncopated version of history might be left to die harmlessly in the newspaper files were it not that the Democrats may be making a come-back in the next election. The former Secretary of State, though too battered ever to hold public office again, exerts a considerable influence within the party and among the pro-cold war intellectuals. He is literate, cultivated, and charming. *The New Republic* reprinted his speech this week, with a dreamy little note by "M. S." (Michael Straight) on its "deeper preception," which reminded one of a bobby-soxer drooling over Frank Sinatra.

The striking characteristic of Mr. Acheson's address is that in it the architect of total diplomacy again shows himself totally incapable of thinking in real terms of foreign policy past or present. In suddenly attacking poor Louis XIV, he treats the War of the Spanish Succession as it would have looked rewritten by a new George Creel whipping up another of those wars to make the world safe for democracy. The coalition led to victory by Marlborough was no crusade. It was not the menace of absolutism but the development of a French Navy and the growth of French commerce under Colbert which brought France into conflict with the commercial empires of England and Holland. The nature of the war is revealed by one of its chief prizes—England obtained thereby a 30-year monopoly on the business of supplying Negro slaves to Spanish America, a privilege previously enjoyed by France.

This is not to suggest that the conflict was purely commercial. France sought the protection of her natural frontiers; Englishman and Dutchman feared for their own. Mr. Acheson is as incapable of seeing the all too human melange of mutual fears and jealousies in the past as he is of seeing them in the present. The ebb and flow in the recurrent wars to right an ever unstable balance of power is invisible to him. Each conflict is a fresh crusade, and always against tyranny. The newest came about, he says, "because the collapse of Germany and Japan removed the powers which stood astride the borders to which five centuries of expansion had brought the Russian empire."

It is as if Mr. Acheson had already forgotten the last war in his readiness to mobilize for the next one. Germany and Japan "collapsed." A curtain is dropped over the causes of that "collapse." To remember would be inconvenient, for what was a danger before may be a danger again. Mr. Acheson now speaks as if the only problem for several centuries has been Russian expansion, and as if Germany and Japan could only be bulwarks of our defense. It is in the same headlong spirit that he speaks of "the material *and moral* rebuilding of Germany and Japan" and of "the gallant fight in Indo-China." What is "moral" about the restoration of the Reichswehr generals to respectability and leadership in Germany, and what is "gallant" (especially in a speech invoking 1776) about the long, dreary and futile war against native aspiration in Indo-China?

Mr. Acheson says that if the United States is to exercise the leadership of the "free peoples", it must not always insist on its own point of view as "the sole repository of wisdom and resistance to tyranny." But despite this graceful admonition he himself shows no readiness to see the unfolding scene through British or French eyes—to see that in the old balance of power game Germany already begins to seem more of a threat than Russia, to see that Western Europe staggering under the arms race wonders when it is to reach that "situation of strength" at which negotiation was to begin.

Mr. Acheson in this speech does bring himself queasily to use the horrid word negotiation, but he shows no more disposition than Mr. Dulles to embark seriously upon it. In this sense, American foreign policy remains bipartisan. In this speech, as before in Washington, there is no clue as to American aims or real interests, what we want or would settle for, short of Russia's destruction and subjugation.

There are other conclusions to be drawn from those four hundred years of history Mr. Acheson touches up in so melodramatic a fashion, moving from the grand monarch to Malenkov in one big 3-D production. We are no longer in the age of the musket. The bloody minuet of the balance of power, building up today the enemy of yesterday for war in a new coalition against the ally of day after tomorrow, must destroy civilization itself if carried on with atomic weapons. We must die with the Russians and the Chinese if we cannot live with them. To live we need not submit to them, but neither can we expect them to submit to us. The task of a humane leadership is to condition mankind for live-and-let-live. Mr. Acheson's—for all its liberal trimmings—is the familiar moralistic rhetoric of the warmonger, never more obsolete, never more dangerous.

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For the First Time Since Eisler Fled

Supreme Court to Pass on The Un-American Committee

Washington—The press missed the significance of the Supreme Court order this week agreeing to review the Emspak contempt case. It means that the Court may now for the first time pass upon the constitutionality of the Un-American Activities Committee. The review refused in the *Hollywood Ten* and *Barsky* cases is granted in the appeal of Julius Emspak, secretary-treasurer of the United Electrical Radio and Machine Workers Union. Only once before —in the Eisler case—has the Court agreed to review the powers of the House committee, but Eisler fled before the case was argued.

In the *Emspak* case, certiorari was asked of the Court on six questions and granted on all but one, which has to do with the predominance of Federal employes on the grand jury which returned the contempt indictment. Question No. 5 is "Whether House Resolution 5 [establishing the Un-American Activities Committee], as construed and applied therein, abridged the petitioner's freedom of speech, press and assembly in violation of the First Amendment." Question No. 6 is "Whether the First Amendment protects a witness before a Congressional Committee against the compulsory disclosure of the identity of trade union officials with whom he is associated and of his political views and affiliations."

This is the background of the *Emspak* case: The U.E. official was named as a Communist by Louis Budenz in the first Foley Square Smith Act trial. In October, 1949, Emspak filed a non-Communist oath affidavit under the Tart-Hartley Act. The general counsel of the National Labor Relations Board announced that this was being referred to the Department of Justice for investigation and Emspak was subpoenaed by the House Committee, appearing before it on December 5, 1949. He pleaded his rights under the Fifth and First Amendments in refusing to answer questions about himself and other officials in the Union, but at many points attacked the Committee and evaded any direct answer without explicitly invoking these rights.

A Surprise to Both Sides

The grant of review on the First Amendment question was a surprise both to the government and the defense. The main legal issue was thought to revolve around the government's claim that "at no time during his questioning did he use the simple, familiar language which would have conveyed to the subcommittee and the court that he feared that his answer to a particular question would incriminate him." It was on this issue that the Circuit Court of Appeals for the District of Columbia, sitting *en banc*, split. Three dissenting judges, Fahy, Edgerton and Bazelon, thought a new trial was required to determine whether Emspak "had been clearly advised that his objections had been rejected."

The government's reply to the petition for certiorari did not even argue Question No. 5 and dismissed No. 6 by saying that under the *Douds* decision upholding the Taft-Hartley non-Communist oath "Congress may constitutionally inquire into the Communist membership of leaders of a particular union who are believed to have access to significant defense information." The Committee, in addition to its general hunting license for the "subversive," had the excuse that it was considering the Wood bill to investigate methods used to screen union officials at defense plants.

The defense pressed hardest on the point the Court declined to hear. It argued that in the current atmosphere, with grand juries under constant FBI surveillance, a grand jury in the District of Columbia was not a free agent in a political case when ten of its twenty members were Federal employes and two others were the wives of government employes. The First Amendment question was raised almost *pro forma* at the close of the petition, but its words will strike a chord with every American intellectual.

The American Index Expurgatorius

"Surely," the Emspak petition said, "the Court cannot ignore the fact that the obtaining of information for legislative purposes, the power in aid of which the Resolution was passed, has become a hollow pretext for the compilation of a vast *index expurgatorius*, the systematic destruction of political dissent and the subjection of thousands of citizens not merely to ruthless invasions of privacy but to serious sanction without due process of law.

"Congressional committees," the petition continued, "now sit in judgment over the political liberty of the American people—teachers, writers, trade unionists, editors, preachers, doctors and just ordinary Americans. We have reached the stage where a "clearance" from the Committee is often indispensable to one's livelihood, career and good name. The assertion by Congress of these powers to sit in political judgment must be reviewed by this Court."

The unexpected readiness to hear argument on this question means that the Emspak case will be the first in which the Supreme Court will consider the power of a Congressional committee to inquire into matters of opinion and belief protected by the First Amendment. The outcome of the contempt actions threatening Harvey O'Connor and Corliss Lamont for defying McCarthy may be determined by the Emspak case, though there are other questions involved in the former, notably the narrow powers conferred upon the McCarthy committee by its enabling resolution.

Justice at Last for Dr. Barsky?

When the members of the Joint Anti-Fascist Refugee Committee went to jail for contempt of the House Committee, three of them were physicians. The chairman, Dr. Edward K. Barsky, an eminent surgeon who helped the Spanish Loyalists, was suspended from practice for six months as a result. The Court has now agreed to hear an appeal from that suspension.

The case is of crucial interest to all professional workers in danger of disbarment, loss of license or discharge for committing contempt. Cases against the two other doctors on the JAFRC, Drs. Louis Miller and Joseph Auslander, depend on the outcome of the *Barsky* appeal.

New York State law provides suspension or revocation of a doctor's license if convicted of a felony. Contempt of Congress is a misdemeanor. The question on which the Supreme Court has agreed to pass is whether the suspension of Dr. Barsky's medical license violated the due process clause of the Fourteenth Amendment and the constitutional prohibitions against double jeopardy and double punishment when the conviction (1) was not a crime, (2) was unrelated to the the practice of medicine and (3) involved "neither moral turpitude nor intellectual unfitness."

Of general interest is the point made by the Committee on Discipline of the Board of Regents which disagreed with the suspension. Citing the *Sinclair* case in the Teapot Dome oil scandal, the Committee on Discipline said that committing contempt was "the traditional method" for testing the powers of an investigating body. It argued that Dr. Barsky could not be punished "on the assumption that facts not shown by evidence to have existed might have been disclosed had the records [of the JAFRC] been produced." The Court declined to accept a brief *amici curiae* presented on Dr. Barsky's behalf by 559 physicians of New York State. If it should hold that contempt does not involve moral turpitude and call for loss of professional standing, the decision will be of great help in other areas affected by the witch hunt.

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The Man Who Rescued McCarthy

The extent to which the Eisenhower Administration is knuckling under to the McCarthy crowd is indicated by the appointment of Robert E. Lee to the Federal Communications Commission. On Friday, July 31 last, after a heated contest for the position, President Eisenhower had finally approved the appointment of Robert J. Dean, a South Dakota broadcaster sponsored for the FCC post by Senator Francis Case, R., of South Dakota, and approved by the Republican National Committee. But somehow Dean got lost in the shuffle, the White House was led to reconsider and with the backing of McCarthy, William Randolph Hearst, Jr., and John Taber, powerful chairman of the House Appropriations Committee, Lee was picked instead. On taking office, he promptly voted to give Hearst the Milwaukee Channel 10 the publisher had long wanted. McCarthy had been interested in this as an ally of Hearst. The Milwaukee *Journal* has been campaigning against McCarthy and it would be useful to him to have Channel 10 in friendly hands.

It was Lee's handiwork which rescued McCarthy at the very beginning of his career when the Senator was well out on a limb. McCarthy is a gambler. He made his famous Wheeling, W. Va., speech about 205 Communists in the State Department in February, 1950, with nothing to back it up. Then, according to the inside story, he sent ex-FBI man Donald Surine on a frantic search for facts to support the speech. Surine finally returned with a batch of names and a summary of security files prepared in 1947 by Lee for the House Appropriations Committee.

Lee joined the FBI in 1938, became administrative assistant to J. Edgar Hoover in 1941 and in 1946 was loaned by Hoover to the House committee for special investigations. It was with Lee's research work in security files that this Republican controlled committee in the 80th Congress four years before McCarthy began the smear attack on the State Department as a nest of Reds. The work done by Lee fizzled out in the 80th Congress but finally supplied McCarthy with the 57 cases he promised to supply the Senate in February, 1950.

Mrs. Lee and McCarthy's then research assistant, Jean Kerr, now Mrs. McCarthy, were close friends and the former was matron of honor at the wedding. The Tydings report did not mention Lee but found McCarthy's list identical with his except that where Lee's findings were "conditional or doubtful, Senator McCarthy's language is positive, unequivocal and colored. Where Senator McCarthy changed the facts in the descriptions of the House investigators, he changed them to create worse impressions."

Broadcasting Telecasting Magazine described the new FCC member as "an Irish Catholic with a Confederate name." Personally pleasant and genial, Lee has long been a source of sensational "Red" stories for favored newspaper writers. His principal experience in the industry has been as moderator on the TV Facts Forum, sponsored by Texas Oil Man H. L. Hunt, who may soon put McCarthy on TV. The Hunt program is loaded and rightist, but Lee when interviewed on his appointment said it was "clean as a hound's tooth."

Washington Whispers

One reason for the hasty Dulles trip to London is fear that Britain and France might withdraw troops from Korea if we cannot assure them that we will keep Rhee firmly under control. . . . The British moved so quickly to suspend popular government in Guiana because the U.S. has air bases there and has been making strong representations to London on the Red menace in the colony. . . . The Trieste dispute threatens to become a major factor in the disintegration of "containment." To disappoint the Italians would risk their membership in NATO but to incur Tito's displeasure would disrupt the strategically more important Balkan alliance of Turkey, Greece and Yugoslavia, which firmly holds the key to the Straits. . . . A major oil find is reported in Argentina, which has serious restrictions on development by foreign capital. There is talk in oil circles that Peron has been offered a huge price if he will retire peacefully from power and permit a new regime to take over more friendly to American oil companies. . . . There seems to be no way of knowing whether that Russian explosion was a full-fledged H-bomb or only a "thermonuclear device" like the one we had earlier exploded. . . . Moscow shows less and less eagerness to discuss the German problem, perhaps considering the establishment of a friendly unified Germany impossible and preferring to keep East Germany as part of its "defense in depth."

Urgent Bulletin

Attorney General Brownell's talk to the National Press Club on Wednesday of this week showed that the Eisenhower Administration is going to put full steam behind the McCarran bill to deprive witnesses before Congressional committees of the privilege against self-incrimination. Write for a free copy of our issue of July 18 last which carried the text of the bill and a full analysis. The minor amendment sought by Brownell would give the Attorney General a voice in the spurious immunity procedure provided, but an Attorney General who is working whole-heartedly with the witch hunt bloc in Congress will be no protection for dissenters. Alert your friends and organizations. Study the bill and prepare for some counter action now.

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With many thanks, I. F. STONE

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JENNINGS PERRY'S PAGE

On TVA Answers to Ike's Perplexities His to Command

When about a week ago Pres. Eisenhower sat down in his White House to talk TVA with Frank Clement, young, debonair, pious Governor of Tennessee, the event—or incident—was noticed generally by the press, to the extent at least of the presidential reaction. Clement had proposed to give the President "the people's side" of TVA: afterward the President said the Governor had brought him certain facts of which he had not been fully aware; he said he did not think the Governor had converted him completely to his point of view. He did not say what facts had been straightened out for him by the interview; he still would not specify the aspects of TVA alarming to him, which previously had prompted his citation of the valley development program as an example of "creeping socialism."

Though apparently persuaded that the easy-speaking young Governor had represented what "the people down there want" and somewhat ashamed of his own adoption of the "creeping" hate-phrase from the epithets of John T. Flynn, the President remained—visibly—uninformed, unsatisfied upon questions touching TVA deep-lodged in his ear or his eye by the devious and unremitting complaint of the program's powerful enemies. It is a quandary such as no fair-minded political leader would care to be left in for long, and I am happy to suggest that the President can round out his information from a reliable, confirmable, official report which his least secretary should be able readily to place in his hands.

This report was made, only a few days before the President's tete-a-tete with Gov. Clement, by TVA Chairman Gordon Clapp in the form of an address before the Kiwanis Club at Memphis and copies of it were filed, as are all TVA papers, in Washington. Barely noticed by the press generally, the chairman's exposition of facts about TVA dealt nevertheless with the very questions about TVA so often seen in the press, and the very same, undoubtedly, persisting in the President's mind.

For instance, as to the matter chiefly moot: whether or not TVA is subsidized by the nation's taxpayers. Mr. Clapp declares for a fact, and with figures, that within 40 years, as required by law, TVA will return to the U. S. Treasury all of the funds provided by Congress to build the TVA power system. The money is being collected from the consumers of TVA power and: "Our payments under this law are well ahead of schedule."

But: "TVA is subsidized by cheap money." Mr. Clapp declares for a fact and with figures that in the past 20 years the net income from TVA's power operations, belonging entirely to the nation as sole owner, represents a return of more than 4 per cent of the investment of the government in the TVA power system. "This return more than covers the cost of money to the Government."

The 1,300,000 retail consumers of TVA power, distributed to them by 148 locally-owned public agencies, enjoy low-cost electricity—but: "This is because these agencies buy power from TVA at subsidized rates." The truth is, Mr. Clapp asserts, with figures, that the wholesale rate for TVA power is only 1-1/100 of one cent less than the wholesale power rate of private power companies in the same area.

Mr. Clapp further points out, to those "alarmed" by the expansion of TVA, that almost half the generating capacity of the entire TVA system is to serve the demand of government defense plants, principally the plants for developing atomic energy; and that the increasing benefit to the nation from the increasing productivity, purchasing power and tax-paying power of the Valley stays and supports the general prosperity.

Now, the Governor of Tennessee was the President's invited guest and hardly could be pressed to "prove" his representations. But the TVA chairman is an employe of the Government; the President can hold him to account for any act or statement.

There is no reason for the President to continue troubled. He has heard what "the people down there" want and cherish—and certainly regard as no "sin." The medicine for his own qualms is to find out for himself what they have learned to be good.

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